

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

SPANSION INC., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No.: 09-10690

Jointly Administered

Related to D.I. 15, 65 and 166

**FINAL ORDER (A) AUTHORIZING DEBTORS TO USE CASH COLLATERAL AND (B)  
GRANTING ADEQUATE PROTECTION TO THE DEBTORS' PREPETITION  
SECURED PARTIES**

Upon the emergency motion, dated March 1, 2009 (the "**Motion**"),<sup>2</sup> of the above-captioned debtors and debtors-in-possession (each a "**Debtor**" and, collectively, the "**Debtors**") in these chapter 11 cases (the "**Chapter 11 Cases**"), to use Cash Collateral; and the Prepetition Lenders and FRN Noteholders having consented or not otherwise objected to the continued use of Cash Collateral solely on the terms as provided herein; and a hearing on the Motion having been held before this Court on March 4, 2009 (the "**First Interim Hearing**"); and this Court thereafter having entered an interim order (the "**First Interim Order**"); and a further hearing on the Motion having been held before this Court on March 23, 2009 (the "**Second Interim Hearing**"); and this Court thereafter having entered a further interim order (the "**Second Interim Order**," and together with the First Interim Order, the "**Interim Orders**"); and further hearings on the Motion having

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Spansion Inc., a Delaware corporation (8239); Spansion Technology LLC, a Delaware limited liability company (3982); Spansion LLC, a Delaware limited liability company (0482); Cerium Laboratories LLC, a Delaware limited liability company (0482), and Spansion International, Inc. a Delaware corporation (7542). The mailing address for each Debtor is 915 DeGuigne Dr., Sunnyvale, CA 94085.

<sup>2</sup> Capitalized terms used but not defined herein shall have the same meanings ascribed to them in the Motion.

been held before this Court on April 23, 2009, and May 15, 2009 (together, the "**Final Hearing**"); and this Court having considered the Motion, all pleadings related thereto, and the record made by the Debtors at the First Interim Hearing, the Second Interim Hearing and the Final Hearing; and after due deliberation and consideration, and good and sufficient cause appearing therefor:

**THE COURT HEREBY FINDS AND CONCLUDES AS FOLLOWS:**<sup>3</sup>

A. On March 1, 2009 (the "**Petition Date**"), each of the Debtors filed with this Court a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. An official committee of unsecured creditors (the "**Committee**") was appointed in these Chapter 11 Cases on or about March 12, 2009.

B. This Court has jurisdiction over the Chapter 11 Cases and the Motion pursuant to 28 U.S.C. §§ 157(b) and 1334. Consideration of the Motion constitutes a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The statutory predicates for the relief sought herein are Sections 105, 361, 362, 363, and 364 of the Bankruptcy Code and Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure. Venue of the Chapter 11 Cases in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

C. On March 1, 2009, the Debtors filed the Motion with this Court and pursuant to Bankruptcy Rules 2002, 4001 and 9014, and the Local Bankruptcy Rules of this Court, the Debtors provided notice of the Motion and the First Interim Hearing by facsimile, overnight delivery or first-class mail to the following parties and/or to their counsel as indicated below: (i) the Office of the United States Trustee for this District (the "**U.S. Trustee**"); (ii) the creditors listed on the Debtors' consolidated list of the sixty-five (65) largest unsecured creditors; (iii) counsel to the

Prepetition Agent; (iv) counsel to the Ad Hoc Consortium; (v) the indenture trustee for the Floating Rate Notes (the "**FRN Trustee**"); (vi) the indenture trustee for Spansion LLC's 11.25% Senior Notes Due 2016; (vii) the indenture trustee for Spansion LLC's Exchangeable Senior Subordinated Debentures Due 2016; (viii) the administrative agent for the UBS Bank USA line of credit; (ix) the Securities and Exchange Commission; (x) the Internal Revenue Service; and (xi) local taxing authorities (collectively, the "**Notice Parties**"). On or about March 5, 2009, the Debtors provided notice of the Second Interim Hearing by first-class mail to the Notice Parties and all other parties who had filed a request for notice prior to that date. On or about March 25, 2009, the Debtors served the Second Interim Order, which included notice of the Final Hearing, by first-class mail to the Notice Parties and all other parties who had filed a request for notice prior to that date. Given the nature of the relief sought in the Motion, this Court concludes that the foregoing notice was sufficient and adequate under the circumstances and complies with the Bankruptcy Code, the Bankruptcy Rules, and any other applicable law, and no further notice relating to this proceeding is necessary or required.

**D.** Upon the entry of this final order (the "**Final Order**"), the Secured Parties' interests in the Prepetition Collateral will be adequately protected. Such finding is made without prejudice to the right of any of the Secured Parties to later assert that their interest in the Prepetition Collateral lacks adequate protection.

**E.** If the Debtors' use of Cash Collateral were to be discontinued, their remaining operations would be severely disrupted, they would be unable to pay operating expenses, including for necessary products and payroll, thereby severely impairing the value of the Prepetition Collateral and other assets of their estates. Accordingly, the Debtors and their estates will suffer

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<sup>3</sup> Pursuant to Bankruptcy Rule 7052, any findings of fact contained herein that may be construed as

immediate and irreparable harm unless the Debtors are immediately authorized to continue to use Cash Collateral on terms and conditions set forth herein.

F. Attached to this Final Order as Exhibit A is a budget (the "**April 23<sup>rd</sup> Budget**") setting forth on a line-item basis the Debtors' anticipated cumulative cash receipts and expenditures on a weekly basis and all necessary and required cumulative expenses which the Debtors expect to incur during each week of the April 23<sup>rd</sup> Budget. The April 23<sup>rd</sup> Budget is an integral part of this Final Order and has been relied upon by the Prepetition Agent, the Prepetition Lenders, the FRN Trustee, the Ad Hoc Consortium and the FRN Noteholders in deciding to consent, or not otherwise object, to entry of this Final Order. The April 23<sup>rd</sup> Budget supersedes any previous budget including, without limitation, any budget attached to the Interim Orders. The Debtors are not in compliance with the previous budget. The Prepetition Agent, the Ad Hoc Consortium and the FRN Trustee are deemed to have waived, for themselves and their constituencies, any breach or default by the Debtors of, or failure of the Debtors to comply with, any previous budget; *provided*, however, such waiver does not extend to any breach or default of or failure to comply with any Approved Budget (as defined below), including, without limitation, the April 23<sup>rd</sup> Budget, occurring after the date of this Final Order, and such waiver shall not be deemed to operate as a waiver, estoppel or limitation of any rights or remedies of the Prepetition Agent, the Prepetition Lenders, the Ad Hoc Consortium, the FRN Trustee or the FRN Noteholders with respect to future breaches or defaults of, or failures to comply with, the terms of this Final Order.

G. The terms and conditions of this Final Order are a fair and reasonable response to the Debtors' request for use of Cash Collateral and the entry of this Final Order is in the best interests of the Debtors' estates and creditors.

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matters of law shall be treated as conclusions of law as if set forth below, and vice versa.

H. The Prepetition Agent, the Prepetition Lenders, the Ad Hoc Consortium, the FRN Trustee and the FRN Noteholders have acted in good faith in consenting or not otherwise objecting to the continued use of Cash Collateral by the Debtors. The agreements and arrangements authorized in the Interim Orders and this Final Order have been negotiated at arms' length with all parties represented by experienced counsel, are fair and reasonable under the circumstances and have been entered into in good faith. Accordingly, any Cash Collateral used by the Debtors shall be deemed to have been permitted in good faith.

I. The Debtors have requested immediate entry of this Final Order pursuant to, and have complied with Bankruptcy Rule 4001(b)(2) and Local Bankruptcy Rule 4001-2. For the reasons stated above and as stated on the record at the Final Hearing, this Court concludes that immediate entry of this Final Order is in the best interests of the Debtors' estates and creditors.

Based upon the foregoing findings and conclusions, and upon the record made before this Court at the hearings on the Motion, and good and sufficient cause appearing therefore:

**IT IS HEREBY:**

1. ORDERED that the Motion is granted on a final basis on the terms set forth below; and it is further
2. ORDERED that all objections, if any, to the entry of this Final Order that have not been withdrawn are hereby overruled; *provided* that all parties-in-interest reserve their right to object on any grounds to any further authorization to use Cash Collateral; and it is further
3. ORDERED that, to the extent any provisions in this Final Order conflict with any provisions of any of the Interim Orders, the Motion, the Prepetition Credit Agreement Documents or the Prepetition FRN Documents (as defined below), the provisions of this Final Order shall control and govern to the extent of such conflict; and it is further

4. ORDERED that the Debtors are authorized to use Cash Collateral: (a) solely in accordance with and pursuant to the terms and provisions of this Final Order; and (b) only to the extent required to pay those expenses enumerated in the Approved Budget as and when such expenses become due and payable; and it is further

5. ORDERED that, for purposes hereof, "enumerated in the Approved Budget" shall mean, unless otherwise authorized by this Court or agreed upon by the Prepetition Agent and the Ad Hoc Consortium, compliance with the Approved Budget in all respects, including without limitation, the weekly expenditures set forth in each line item thereof; *provided* that the Debtors shall be permitted to (i) carry over any amounts not expended for a particular line item in any week to succeeding weeks, (ii) expend up to 15% more than the amounts set forth in a particular line item for a specific week in such week so long as the aggregate expenditures during the period set forth in the Approved Budget do not exceed the total shown on the Approved Budget for such period by more than 15% and (iii) pay amounts incurred from and after the Petition Date, in addition to or for categories not listed in the Approved Budget with the prior written consent of the Prepetition Agent and the Ad Hoc Consortium and three (3) business days' notice to the Committee and counsel to the FRN Trustee; and *provided further* that nothing in this Final Order shall authorize the sale or other disposition of any asset of the Debtors or their estates outside the ordinary course of business or any disbursement of the proceeds resulting therefrom except as expressly permitted hereunder and in accordance with the Approved Budget; and it is further

6. ORDERED that the April 23<sup>rd</sup> Budget may be modified, supplemented and/or extended from time to time by additional budgets (covering any time period covered by a prior budget or covering additional time periods) prepared by the Debtors and approved by the Prepetition Agent and the Ad Hoc Consortium (each such additional budget, a "**Supplemental**

**Proposed Budget**"); the Debtors shall promptly provide a copy of any Supplemental Proposed Budget to counsel for the Committee and counsel to the FRN Trustee, and (i) if the Committee does not object to such Supplemental Proposed Budget within five (5) days after receipt of such Supplemental Proposed Budget, such Supplemental Proposed Budget shall be deemed to be effective without any further order of this Court or (ii) if the Committee objects to such Supplemental Proposed Budget within such five (5) day period, such Supplemental Proposed Budget shall be effective only upon the withdrawal of such objection by the Committee or further order of this Court (any Supplemental Proposed Budget that becomes effective pursuant to (i) or (ii) above is referred to herein as a "**Supplemental Approved Budget**"); and the April 23<sup>rd</sup> Budget and any and all Supplemental Approved Budgets, without duplication, shall constitute the "**Approved Budget**"; and it is further

7. ORDERED that, unless extended by the Court, this Final Order and the Debtors' authorization to use Cash Collateral pursuant to this Final Order will immediately terminate on the earlier of (i) the last day covered by the then current Approved Budget (subject to any further Supplemental Approved Budget that has been approved in accordance with the requirements of paragraph 6 above) and (ii) the occurrence of a Termination Event (as defined below) (the effective date of such termination, the "**Termination Date**"); *provided that*, notwithstanding the occurrence of the Termination Date, the Debtors may continue to use Cash Collateral for the payment of any unpaid postpetition administrative expenses incurred in accordance with the Approved Budget and this Final Order so long as such expenses existed and were actually incurred prior to the Termination Date; and *provided further* that as used herein, the term "**Termination Event**" means the occurrence of any of the following (unless each of the Prepetition Agent and the Ad Hoc Consortium otherwise agrees in writing in its sole discretion):

- a. this Court terminates the Debtors' authorization to use the Cash Collateral;
- b. the Debtors breach any of their obligations under this Final Order other than their obligations under paragraph 39, and have not cured such breach within five (5) business days after the Debtors and the Committee receive written notice from the Prepetition Agent, the Ad Hoc Consortium and/or the FRN Trustee that it intends to terminate its consent to use Cash Collateral;
- c. the Prepetition Agent withdraws its consent to use Cash Collateral pursuant to paragraph 18 below; *provided* that the Prepetition Agent has provided at least five (5) business days prior written notice to the Debtors, counsel to the Committee, counsel to the Ad Hoc Consortium and counsel to the FRN Trustee of such withdrawal;
- d. the Debtors breach their obligation under paragraph 39 below;
- e. the dismissal of any Chapter 11 Case or the conversion of any Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code or any Debtor shall file a motion or other pleading seeking the dismissal or conversion of any Chapter 11 Case;
- f. the appointment of an interim or permanent trustee in any Chapter 11 Case or the appointment of a receiver or an examiner in any Chapter 11 Case with expanded powers to operate or manage the financial affairs, the business, or reorganization of any Debtor;
- g. the dissolution of any Debtor;
- h. except to the extent that each of the Prepetition Agent and the Ad Hoc Consortium has agreed in writing in its sole discretion, (1) any stay, vacatur, reversal, modification or other amendment in any respect of this Final Order, (2) the filing of a motion or other pleading by any Debtor seeking the entry of any order providing for any such stay, vacatur, reversal, modification or other amendment with respect to this Final Order, or (3) the filing of a motion for reconsideration by any Debtor with respect to this Final Order;
- i. entry of an order authorizing the sale, liquidation or other disposition of all, or substantially all, of the Debtors' assets;
- j. the bringing of a motion or taking of any action by any Debtor in any Chapter 11 Case to use Cash Collateral under Section 363(c) of the Bankruptcy Code without the prior written consent of the Prepetition Agent and the Ad Hoc Consortium; and
- k. the entry of an order by the Court granting relief from or modifying the automatic stay of Section 362 of the Bankruptcy Code to allow any creditor to execute upon or enforce a lien or security interest on any Prepetition Collateral or New Collateral, which would have a material adverse effect on (i) any Debtor or its financial condition, business, prospects or assets or (ii) the Prepetition Agent, the Prepetition



Lenders, the FRN Trustee and/or the FRN Noteholders under this Final Order, the Prepetition Credit Agreement Documents or the Prepetition FRN Documents;

and *provided further* that, except as set forth herein in this paragraph 7, any

proposed use of Cash Collateral by the Debtors after the Termination Date shall

only be permitted pursuant to a further order of this Court, with the objections and defenses of all parties-in-interest reserved; and it is further

8. ORDERED that, subject to paragraphs 33 below, the Prepetition Lender Liens shall continue to attach to the Prepetition Lender Collateral with the same validity, perfection and priority as existed on the Petition Date; and it is further

9. ORDERED that, as adequate protection, the Debtors that granted liens on their assets under the Prepetition Credit Agreement (the “**Revolving Obligors**”) shall grant replacement liens to the Prepetition Lenders on all property and assets of the Revolving Obligors, and all proceeds, rents, or profits thereof, that were subject to the Prepetition Lender Liens and additional liens to the Prepetition Lenders on all of the Revolving Obligors’ unencumbered assets (other than (x) claims and causes of action arising under 11 U.S.C. § 544, 545, 547, 548 and 549 (collectively, the “**Avoidance Actions**”) and (y) 35% of the equity interest in the Revolving Obligors first tier foreign subsidiaries (the “**35% Equity Interests**”)) (the “**Additional Revolver Collateral**”), including, without limitation, all assets of the Revolving Obligors created or acquired after the Petition Date (the “**Primary Prepetition Lender Adequate Protection Liens**”), to secure an amount of the Prepetition Revolver Indebtedness equal to the aggregate diminution in the value of the Prepetition Lenders’ interests in the Prepetition Lender Collateral occurring from and after the Petition Date, including, without limitation, such diminution resulting from use of Cash Collateral or other Prepetition Lender Collateral (whether as a result of physical deterioration, consumption, use, sale, lease, disposition, imposition of the automatic stay, shrinkage, decline in market value or

otherwise) (the "**Revolving Diminution Claims**"), and each of the Debtors that has not granted liens under the Prepetition Credit Agreement (the "**Revolving Non-Obligors**") shall grant replacement liens to the Prepetition Lenders on all property and assets of such Revolving Non-Obligor, and all proceeds, rents, or profits thereof (other than Avoidance Actions) (the "**Non-Obligor Revolver Collateral**," and together with the Additional Revolver Collateral, the "**New Revolver Collateral**"), including, without limitation, all assets of the Revolving Non-Obligors created or acquired after the Petition Date (together with the Primary Prepetition Lender Adequate Protection Liens, the "**Prepetition Lender Adequate Protection Liens**"), to secure an amount of the Prepetition Revolver Indebtedness equal to the lesser of (i) the Revolving Diminution Claims and (ii) the amount of Cash Collateral actually used and not repaid to Spansion LLC by such Revolving Non-Obligor; and it is further

10. ORDERED that the Prepetition Lender Adequate Protection Liens shall at all times be senior to (i) the rights of the Debtors and any successor trustee or estate representative in the Chapter 11 Cases or any successor case, (ii) any inter-company claim of any of the Debtors or any subsidiary or affiliate of any Debtor, (iii) any lien which is avoided or otherwise preserved for the benefit of any Debtor's estate under Section 551 or any other provision of the Bankruptcy Code, and (iv) as to the Revolving Credit Priority Collateral and the New Revolver Collateral that is of the same character and nature as the Revolving Credit Priority Collateral, the Noteholder Liens and the Noteholder Adequate Protection Liens; *provided however* that the Prepetition Lender Adequate Protection Liens shall be (a) subordinate in priority to (1) the Prepetition Lender Liens, (2) the Carve-Out (as defined below), and (3) the Noteholder Liens and the Noteholder Adequate Protection Liens (as defined below) on the Noteholder Priority Collateral, the New FRN Collateral (as defined below) that is of the same character and nature as the Noteholder Priority Collateral, and

the Non-Obligor Revolver Collateral owned by the Noteholder Obligors (as defined below), and (b) pari passu with the Noteholder Adequate Protection Liens (as defined below) on (1) the New Revolver Collateral owned by the Noteholder Non-Obligors and (2) the New Revolver Collateral that is not of the same character and nature as the Revolving Credit Priority Collateral or the Noteholder Priority Collateral; and it is further

11. ORDERED that the Prepetition Revolver Indebtedness shall include, without limitation, any debts, liabilities and obligations of the Debtors arising from or in connection with Bank Products (as defined in the Prepetition Credit Agreement) and any similar claims of the Prepetition Agent or its affiliates that are authorized by or in connection with any order approving the Motion of the Debtors for Order (I) Authorizing and Approving Continued Use of Existing Cash Management System, (II) Authorizing Continued Use of Existing Bank Accounts and Business Forms, and (III) Waiving the Requirements of 11 U.S.C. § 345(b) on an Interim Basis; *provided that*, for the avoidance of doubt, any corporate credit card that has been or might be issued by the Prepetition Agent to the Debtors shall be a Bank Product and the Prepetition Agent shall be permitted to cash collateralize the obligations of the Debtors on account of such corporate credit card in an amount equal to two (2) times the credit limit of the corporate credit card up to \$300,000; and it is further

12. ORDERED that, as additional adequate protection, to the extent of the Revolving Diminution Claims, the Prepetition Lenders will be granted superpriority claims under Section 507(b) of the Bankruptcy Code (the "**Prepetition Lender Superpriority Claim**"), and the Prepetition Lender Superpriority Claim shall have priority in payment over any and all administrative expense claims of any kind under the Bankruptcy Code (which shall at all times be senior to the rights of the Debtors, any successor trustee or estate representative, or any other

creditor or party-in-interest in the Chapter 11 Cases or any successor case), except for the Carve-Out, as to which the Prepetition Lender Superpriority Claim shall be subordinate, and the Noteholder Superpriority Claim (as defined below), as to which the Prepetition Lender Superpriority Claim shall be pari passu in priority and right of payment; *provided* that the Prepetition Lender Superpriority Claim shall not be payable from, or have recourse to, the Avoidance Actions or proceeds and recoveries from the Avoidance Actions; and it is further

13. ORDERED that, subject to paragraphs 33 below, the Noteholder Liens shall continue to attach to the Noteholder Collateral with the same validity, perfection and priority as existed on the Petition Date; and it is further

14. ORDERED that, as adequate protection, the Debtors that have granted liens to the FRN Trustee and/or the FRN Noteholders on account of the FRNs (the "**FRN Obligors**") shall grant replacement liens to the FRN Trustee and the FRN Noteholders on all property and assets of the FRN Obligors, and all proceeds, rents, or profits thereof, that were subject to the FRN Noteholders' liens on the Noteholder Collateral (the "**Noteholder Liens**") and additional liens to the FRN Noteholders on all of the FRN Obligors' unencumbered assets (other than (i) Avoidance Actions and (ii) 35% Equity Interests) (the "**Additional FRN Collateral**"), including, without limitation, all assets of the FRN Obligors created or acquired after the Petition Date (the "**Primary Noteholder Adequate Protection Liens**"), to secure an amount of the Prepetition Noteholder Indebtedness equal to the aggregate diminution in the value of the FRN Noteholders' interests in the Noteholder Collateral occurring from and after the Petition Date, including, without limitation, such diminution resulting from use of Cash Collateral or other Noteholder Collateral (whether as a result of physical deterioration, consumption, use, sale, lease, disposition, imposition of the automatic stay, shrinkage, decline in market value or otherwise) (the "**FRN Diminution Claims**"), and each

of the Debtors that has not granted liens to the FRN Trustee and/or the FRN Noteholders on account of the FRNs (the "**FRN Non-Obligors**") shall grant replacement liens to the FRN Trustee and the FRN Noteholders on all property and assets of the FRN Non-Obligors, and all proceeds, rents, or profits thereof (other than Avoidance Actions) (the "**Non-Obligor FRN Collateral**," and together with the Additional FRN Collateral, the "**New FRN Collateral**"), including, without limitation, all assets of the FRN Non-Obligors created or acquired after the Petition Date (together with the Primary Noteholder Adequate Protection Liens, the "**Noteholder Adequate Protection Liens**"), to secure an amount of the Prepetition Noteholder Indebtedness equal to the lesser of (i) the FRN Diminution Claims and (ii) the amount of Cash Collateral actually used and not repaid to Spansion LLC by such FRN Non-Obligor; and it is further

15. ORDERED that the Noteholder Adequate Protection Liens shall at all times be senior to (i) the rights of the Debtors and any successor trustee or estate representative in the Chapter 11 Cases or any successor case, (ii) any inter-company claim of any Debtor or any subsidiary or affiliate of any Debtor, (iii) any lien which is avoided or otherwise preserved for the benefit of any Debtor's estate under Section 551 or any other provision of the Bankruptcy Code, (iv) as to the Noteholder Priority Collateral and the New FRN Collateral that is of the same character and nature as the Noteholder Priority Collateral, the Prepetition Lender Liens and the Prepetition Lender Adequate Protection Liens; *provided however* that the Noteholder Adequate Protection Liens shall be (a) subordinate in priority to (1) the Noteholder Liens, (2) the Carve-Out and (3) the Prepetition Lender Liens and the Prepetition Lender Adequate Protection Liens on the Revolving Credit Priority Collateral and the New Revolver Collateral that is of the same character and nature as the Revolving Credit Priority Collateral, and the Non-Obligor FRN Collateral owned by the Revolver Obligors and (b) *pari passu* with the Prepetition Lender Adequate Protection Liens on (1)

the New FRN Collateral owned by the Revolver Non-Obligors and (2) the New FRN Collateral that is not of the same character and nature as the Revolving Credit Priority Collateral or the Notchholder Priority Collateral; and it is further

16. ORDERED that, as additional adequate protection, to the extent of the FRN Diminution Claims, the FRN Trustee and the FRN Noteholders will be granted, to the extent of the net decrease, superpriority claims under Section 507(b) of the Bankruptcy Code (the “**Noteholder Superpriority Claim**”), and the Notchholder Superpriority Claim shall have priority in payment over any and all administrative expense claims of any kind under the Bankruptcy Code (which shall at all times be senior to the rights of the Debtors, any successor trustee or estate representative, or any other creditor or party-in-interest in the Chapter 11 Cases or any successor case), except for the Carve-Out, as to which the Notchholder Superpriority Claim shall be subordinate, and the Prepetition Lender Superpriority Claim, as to which the Notchholder Superpriority Claim shall be pari passu in priority and right of payment; *provided* that the Noteholder Superpriority Claim shall not be payable from, or have recourse to, the Avoidance Actions or proceeds and recoveries from the Avoidance Actions; and it is further

17. ORDERED that, from and after the Petition Date, the Debtors shall continue to pay, as and when due, all interest (at the non-default rate), fees and expenses payable on account of the Prepetition Revolver Indebtedness as required in the Prepetition Credit Agreement Documents; *provided however* that such payments shall be reapplied to reduce the principal amount of the Prepetition Revolver Indebtedness (or disgorged if all such principal has been repaid in full), as applicable, to the extent that, pursuant to a final, non-appealable order, the Court has determined that the Prepetition Lenders are not entitled to interest, fees and expenses payable pursuant to the Prepetition Credit Agreement Documents, respectively, after the Petition Date under Section 506(b)

of the Bankruptcy Code; and *provided further* that, to the extent that, pursuant to a final, non-appealable order, the Court has determined that any damages arising from the rejection, breach or termination of any Equipment Lease or any indebtedness under any recharacterized Equipment Lease are not Prepetition Revolver Indebtedness, any interest, fees and expenses paid on account of, or solely with respect to, such damages under this Final Order shall be reapplied to reduce the principal amount of the Prepetition Revolver Indebtedness (or disgorged if all such principal has been repaid in full) (for the avoidance of doubt, this proviso shall not apply to any payments made to the Prepetition Agent or any of the Prepetition Lenders pursuant to paragraph 18 or any payments made to the Prepetition Agent or any of the Prepetition Lenders under 365(d)(5) or 503(b)(1) on account of or with respect to the Equipment Leases); and it is further

18. ORDERED that, from and after the Petition Date, the Debtors shall continue to make the monthly rental payments required under the Equipment Leases as and when they become due without giving effect to any default, acceleration or similar provisions contained in the Equipment Leases; *provided* that if the Debtors, with approval of this Court, reject any of the Equipment Leases pursuant to Section 365 of the Bankruptcy Code before the Termination Date or a final order is entered recharacterizing any Equipment Leases, avoiding any lien on the Prepetition Lender Collateral securing any obligations under the Equipment Leases or determining that the obligations of any of the Revolver Obligors under the Equipment Leases does not constitute Prepetition Revolver Indebtedness (i) the Debtors shall no longer be required to make such monthly rental payments required under the Equipment Leases that were rejected; *provided* that the rejection damages resulting from any rejection or the total outstanding indebtedness under any recharacterized Equipment Lease shall be deemed to be Prepetition Revolver Indebtedness for purposes of paragraph 17 above unless the Court has entered a final order avoiding any lien on the

Prepetition Lender Collateral with respect thereto or determining that such rejection damages or the outstanding indebtedness, as applicable, under any recharacterized Equipment Lease does not constitute Prepetition Revolver Indebtedness and (ii) the Prepetition Agent shall have the right to withdraw its consent to use of Cash Collateral by giving written notice to the Debtors and the Committee; and *provided further* that nothing contained herein shall be deemed a waiver by any party in interest, including, without limitation, the Debtors, the Committee and the Prepetition Agent, from objecting to any such rejection, asserting that the Equipment Leases should be characterized as financing vehicles rather than true leases, objecting to the characterization of any rejection damages or any indebtedness under any recharacterized Equipment Lease as Prepetition Revolver Indebtedness, seeking to avoid any lien on the Prepetition Lender Collateral with respect to the Equipment Leases, seeking disgorgement or otherwise ; and it is further

19. ORDERED that, notwithstanding anything to the contrary in the Prepetition Credit Agreement Documents, the Interim Orders or this Final Order, the Prepetition Agent, in its capacity as a Prepetition Lender (or such other Prepetition Lender acceptable to the Prepetition Agent), is hereby authorized (but not directed) to amend, replace, or reissue any Letter of Credit outstanding under the Credit Facility as of the Petition Date, so long as (i) the face amount of such Letter of Credit outstanding after any such amendment, replacement, or reissuance does not exceed the face amount of the original Letter of Credit outstanding as of the Petition Date and (ii) any such amendment, replacement or reissuance is on substantially the same terms and conditions, and, unless agreed to in writing by the Debtors, on terms and conditions no less favorable to the Debtors, as any Letters of Credit outstanding under the Credit Facility as of the Petition Date; and it is further

20. ORDERED that any Letter of Credit that is amended or issued under paragraph 19 of this Final Order shall, for all purposes, be deemed to have been amended or issued, as applicable,



under the Prepetition Credit Agreement Documents and entitled to the protections thereof, and no action taken by the Prepetition Agent under paragraph 19 of this Final Order shall adversely affect the validity of the claims, or the validity and priority of the liens of the Prepetition Lenders; and it is further

21. ORDERED that, from and after the Petition Date, the Debtors shall also continue to pay, as and when due, the reasonable fees and expenses of Brown Rudnick and Houlihan as set forth in the engagement letters attached as Exhibit C to the Motion, pay, as and when due, the reasonable fees and expenses of Womble Carlyle Sandridge & Rice, PLLC and CRA International, satisfy the indemnification obligations owed to Houlihan as set forth in the engagement letters attached as Exhibit C to the Motion, pay, as and when due, the reasonable fees and expenses of other professional advisors retained by the Ad Hoc Consortium (after notice to counsel for the Debtors and the Committee) to the extent the Debtors are obligated to pay or reimburse such professional costs under the Prepetition FRN Documents, and pay, as and when due, the reasonable fees and expenses of HSBC as the FRN Trustee, including, without limitation, the reasonable fees and expenses of its counsel; *provided however* that (i) the amount of such payments shall be applied to reduce the principal amount of the Prepetition Notchholder Indebtedness (or disgorged by the FRN Notchholders if all such principal has been repaid in full), as applicable, to the extent that, pursuant to a final, non-appealable order, the Court determines that such payments from the Debtors were not entitled to be paid pursuant to the Prepetition FRN Documents and (ii) any such payment to Brown Rudnick or Houlihan, as applicable, shall be subject to disgorgement to the extent it is determined that such payment was not payable under the applicable engagement letter attached as Exhibit C to the Motion; and *provided further* that any person, firm or entity seeking payment of any of its fees and/or expenses pursuant to this paragraph 21 (a “**Requesting Entity**”) shall provide copies of any

invoices, statements, receipts or other documents evidencing in reasonable detail such fees and/or expenses to the Debtors and counsel for the Committee, each of which shall have ten (10) days from the receipt of such invoices, statements, receipts or other documents to send written notice to such Requesting Entity that it objects to the payment thereof in full or in part, in which case the disputed portion of such fees and/or expenses shall not be paid to such Requesting Entity pending approval of this Court; and *provided further* that if no written objection to such fees and/or expenses is timely received by such Requesting Entity in accordance with the preceding proviso, then the Debtors shall promptly pay such amounts to such Requesting Entity (to the extent required above); and to the extent the objecting party and such Requesting Entity are unable to resolve any objection to the disputed fees and expenses within thirty (30) days after the date on which the objecting party delivered its notice of objection to such Requesting Entity, the objecting party shall be required immediately to file an objection with the Court; *provided* that any Requesting Entity may file a motion seeking payment of any disputed amounts at any time after receiving written notice of a dispute from any objecting party; and it is further

22. ORDERED that the Debtors shall pay, when due and payable under the Prepetition FRN Documents, the interest payments (at the non-default rate) on the FRNs that are due on June 1, 2009 and September 1, 2009, as set forth in the Prepetition FRN Documents; *provided however* that such payments shall be reapplied to reduce the principal amount of the FRNs (or disgorged if all such principal has been repaid in full), as applicable, to the extent that, pursuant to a final, non-appealable order, the Court has determined that the FRN Noteholders are not entitled to interest pursuant to the Prepetition FRN Documents after the Petition Date under Section 506(b) of the Bankruptcy Code; and it is further

23. ORDERED that, on Thursday of each week, the Debtors shall provide the Prepetition Agent, Houlihan, the FRN Trustee and the Committee's financial advisor with an updated rolling 4-week cash flow statement which shall include a variance report comparing actual cash flow results for all applicable prior periods to the forecasted cash flow results for such periods, a statement of any weekly or cumulative variances in any line item for receipts or disbursements and any necessary amendments to the Approved Budget; *provided* that the Debtors shall not be required to provide an updated rolling 4-week cash flow statement on April 23, 2009, but shall be required to provide a variance report on such date; and it is further

24. ORDERED that the Debtors shall also provide or make available to the Prepetition Agent, the FRN Trustee (with a copy to the Ad Hoc Consortium) and counsel for the Committee copies of all reports filed with the U.S. Trustee or the U.S. Securities and Exchange Commission and all public press releases; and it is further

25. ORDERED that the Prepetition Agent, the FRN Trustee, the Ad Hoc Consortium and the Committee, and their professional advisors shall be given reasonable access during normal business hours to the Debtors' books and records, and the Debtors shall respond to reasonable inquiries from the Prepetition Agent, the FRN Trustee, the Ad Hoc Consortium, the Committee or their professional advisors related to the Debtors' books and records and operations; and it is further

26. ORDERED that, notwithstanding anything to the contrary contained in the Interim Orders or this Final Order, upon the occurrence of the Termination Date, the liens and claims granted to any of the Prepetition Agent, the Prepetition Lenders, the FRN Trustee, or FRN Notcholders in the Interim Order, this Final Order, the Prepetition Credit Agreement Documents and/or the Prepetition FRN Documents shall be subject to the payment, without duplication, of the following fees and claims (the amounts set forth below, together with the limitations set forth

therein, collectively, the "**Carve-Out**"), but only to the extent that there are not sufficient, unencumbered funds in the Debtors' estates to pay such amounts at the time such payment is permitted by order of this Court; *provided* that Cash Collateral may nonetheless be used to fund or otherwise pay the fees and expenses included within the Carve-Out even if unencumbered funds exist at such time and, to the extent of such use, the Prepetition Agent and the Prepetition Lenders are hereby granted Prepetition Lender Adequate Protection Liens as provided in paragraph 9 above and Prepetition Lender Superpriority Claims as provided in paragraph 12 above and the FRN Trustee and the FRN Noteholders are hereby granted Noteholder Adequate Protection Liens as provided in paragraph 14 above and Noteholder Superpriority Claims as provided in paragraph 16 above:

(i) the claims of the respective retained professionals of the Debtors and Committee, whose retention is approved by this Court during the Chapter 11 Cases pursuant to Sections 327, 328, 363 and 1103, respectively, of the Bankruptcy Code, (collectively, the "**Retained Professionals**") for unpaid fees and expenses and the reasonable expenses (other than any professional fees or expenses incurred by any professionals for any individual Committee members) of any Committee member in connection with its services as a Committee member (the "**Committee Member Expenses**") which were incurred at any time on and after the Petition Date and prior to the Termination Date or which represent "success" or "transaction" fees that have been approved by the Bankruptcy Court in connection with the retention of Morgan Stanley & Co. and relate to transactions that were initiated prior to the Termination Date; *provided* that, in each case (other than with respect to any success or transaction fee), such fees and expenses of the Retained Professionals and/or Committee Member Expenses are in accordance with the Approved Budget (including any accrued amounts contained therein) and, with respect to the fees and expenses of the Retained Professionals, are ultimately allowed on a final basis by this Court under Sections 330 and 331 of the Bankruptcy Code (or other final order of this Court with respect to professionals engaged by the Debtors pursuant to Section 363 of the Bankruptcy Code, which for Brincko Associates, Inc. will consist of its final retention order and the quarterly fee notice process specified in such final retention order) (such fees and expenses described in this clause (i), the "**Pre-Termination Date Expenses**" and the permitted amount thereof, the "**Pre-Termination Date Amount**");

(ii) the claims of the Retained Professionals for unpaid fees and expenses and Committee Member Expenses which were incurred on and after the Termination Date; *provided* that, in each case, such fees and expenses of the Retained Professionals and Committee Member Expenses (A) do not exceed \$2,500,000 in the aggregate for all of the fees and expenses of the Retained Professionals and Committee Member Expenses incurred on and after the Termination Date, (B) any retainers held by any Retained Professionals are used first to satisfy their respective

Post-Termination Date Expenses (as defined below) and (C) with respect to the claims of the Retained Professionals for unpaid fees and expenses, are ultimately allowed on a final basis by this Court under Sections 330 and 331 of the Bankruptcy Code (or other final order of this Court with respect to professionals engaged by the Debtors pursuant to Section 363 of the Bankruptcy Code, which for Brincko Associates, Inc. will consist of its final retention order) (such fees and expenses described in this clause (ii), the "**Post-Termination Date Expenses**" and the permitted amount thereof, the "**Post-Termination Date Amount**" and, together with the Pre-Termination Date Amount, the "**Carve-Out Amount**"); and

(iii) the unpaid fees payable to the United States Trustee and Clerk of the Bankruptcy Court pursuant to Section 1930 of Title 28 of the United States Code;

and it is further

27. ORDERED that, subject to the terms and conditions of this Final Order, the Debtors shall be permitted to pay compensation and reimbursement of reasonable fees and expenses of the Retained Professionals allowed and payable under Sections 328, 330 and 331 of the Bankruptcy Code (including on an interim basis), as the same may be due and payable, that constitute Pre-Termination Date Expenses and such payments shall not reduce or be deemed to reduce the Post-Termination Date Amount; and it is further

28. ORDERED that, promptly after the occurrence of the Termination Date and pursuant to further order of this Court, an interest-bearing reserve account shall be created by the Debtors at a financial institution reasonably acceptable to the Prepetition Agent, the FRN Trustee and the Ad Hoc Consortium, which account shall hold only an amount of funds equal to the unused portion of the Carve-Out Amount; and it is further

29. ORDERED that payment of any fees, costs and expenses of the Retained Professionals pursuant to the Carve-Out shall not, and shall not be deemed to, (i) reduce any Debtor's obligations owed to any of the Prepetition Agent, the Prepetition Lenders, the FRN Trustee, and/or the FRN Noteholders or (ii) subordinate, modify, alter or otherwise affect any of the liens and security interests of such parties in the New Collateral or Prepetition Collateral (or their

respective claims against the Debtors) (except insofar as such claims, liens and security interests are subject to payment of the fees and expenses included within the Carve-Out); and it is further

30. ORDERED that the Prepetition Agent, the Prepetition Lenders, the FRN Trustee, the Ad Hoc Consortium and the FRN Notcholders shall not be responsible for the direct payment or reimbursement of any fees or disbursements of any Retained Professionals (or of any other Person) incurred in connection with the Chapter 11 Cases or any successor case, and nothing in the Interim Order, this Final Order or otherwise shall be construed to obligate such parties to pay compensation to or to reimburse expenses of any Retained Professional or any other person, or to ensure that any Debtor has sufficient funds to pay such compensation or reimbursement other than as provided for in paragraph 28; and it is further

31. ORDERED that, notwithstanding anything herein to the contrary, the Cash Collateral and the Carve-Out may not be used to investigate, bring or prosecute any Claims and Defenses (as defined below); *provided* that up to \$100,000 of Cash Collateral in the aggregate may be used to pay the allowed fees and expenses of professionals retained by the Committee incurred investigating, but not initiating or prosecuting, any Avoidance Actions or any other claims or causes of action against the Prepetition Agent, the Prepetition Lenders, the FRN Trustee or the FRN Notcholders; and it is further

32. ORDERED that, as used herein, the term "**Claims and Defenses**" means any and all claims and causes of action arising out of, based upon or related to, in whole or in part, any of the Prepetition Credit Agreement Documents or the Prepetition FRN Documents, any aspect of the prepetition relationship between the Debtors relating to any of the Prepetition Credit Agreement Documents, any of the Prepetition FRN Documents or any transaction contemplated by the Prepetition Credit Agreement Documents or the Prepetition FRN Documents, on the one hand, and

any or all of the Prepetition Agent, the Prepetition Lenders, the FRN Trustee and/or the FRN Noteholders, on the other hand, or any other acts or omissions by any or all of the Prepetition Agent, the Prepetition Lenders, the FRN Trustee and/or the FRN Noteholders in connection with any of the Prepetition Credit Agreement Documents or the Prepetition FRN Documents or their pre-petition relationship with any of the Debtors or any of their affiliate thereof relating to any of the Prepetition Credit Agreement Documents, any of the Prepetition FRN Documents or any transaction contemplated thereby, including, without limitation, any claims or defenses as to the extent, validity, perfection and/or priority of any of the Prepetition Liens, the Prepetition Revolving Indebtedness and/or the Prepetition Notchholder Indebtedness, any claims or defenses under chapter 5 of the Bankruptcy Code or any other causes of action; and it is further

33. ORDERED that, notwithstanding anything contained herein to the contrary, the extent, validity, priority, perfection and enforceability of the Prepetition Revolving Indebtedness and the Prepetition Notchholder Indebtedness and the Prepetition Liens and the viability of any Claims and Defenses are for all purposes subject to the rights of any party in interest (including, without limitation, the Debtors and the Committee) to file an appropriate pleading seeking to invalidate, subordinate or otherwise challenge any of the Prepetition Indebtedness or Prepetition Liens or to assert one or more Claims and Defenses (each, a "**Challenge**"); *provided, however*, that, (A) as to every party in interest, including without limitation, the Debtors, but excluding the Committee, such pleading must be filed in this Court on or before May 25, 2009, subject to extension by (x) consent of the Prepetition Agent if the Challenge is against or relates to any of the Prepetition Agent or the Prepetition Lenders or consent of the Ad Hoc Consortium (so long as it is comprised of FRN Noteholders who hold, in the aggregate, no less than 50.1% of the then aggregate outstanding principal amount under the FRNs) and the FRN Trustee if the Challenge is against or

relates to any of the FRN Trustee or the FRN Noteholders, or (y) further order of this Court, and, if no such pleading is filed within the period set forth above, then all Claims and Defenses against the Prepetition Agent, the Prepetition Lenders, the FRN Trustee and/or the FRN Noteholders, as applicable, shall be, without further notice or order of the Court, deemed to have been forever relinquished, released and waived as to such other person or entity other than the Committee, and (B) as to the Committee only, such pleading must be filed in this Court before the earlier to occur of (i) five (5) business days prior to the first day on which a hearing to consider confirmation of a plan of reorganization is scheduled by this Court and (ii) ninety (90) days after the entry of this Final Order, the foregoing period being subject to extension by (x) consent of the Prepetition Agent if the Challenge is against or relates to any of the Prepetition Agent or the Prepetition Lenders or consent of the Ad Hoc Consortium (so long as it is comprised of FRN Noteholders who hold, in the aggregate, no less than 50.1% of the then aggregate outstanding principal amount under the FRNs) and the FRN Trustee if the Challenge is against or relates to any of the FRN Trustee or the FRN Noteholders, or (y) further order of this Court, and, if no such pleading is filed within the period set forth above, then all Claims and Defenses against the Prepetition Agent, the Prepetition Lenders, the FRN Trustee and/or the FRN Noteholders, as applicable, shall be, without further notice or order of the Court, deemed to have been forever relinquished, released and waived as to the Committee; *provided further* that, in the event of a Challenge that results in a final, non-appealable order, the Prepetition Agent, the Prepetition Lenders, the FRN Trustee and the FRN Noteholders acknowledge that nothing contained in the Interim Orders and/or this Final Order limits or otherwise affects the remedies available to satisfy the judgment or obligation, including disgorgement of monies paid on account of the Prepetition Revolving Indebtedness or the Prepetition Notchholder Indebtedness; and it is further



34. ORDERED that nothing herein shall impair, or be construed to impair, the ability of any party to object to any of the fees, expenses, reimbursement or compensation of the Retained Professionals; and it is further

35. ORDERED that the Prepetition Credit Agreement Documents and the FRNs, the documents governing the FRNs and any security agreements, pledge agreements, mortgages, controlled account agreements, UCC financing statements and any other or similar agreements entered into or delivered in connection with the FRNs (all of the foregoing documents, agreement and instruments are collectively referred to herein as the "**Prepetition FRN Documents**"), and the terms and provisions of the Prepetition Credit Agreement Documents and the Prepetition FRN Documents shall remain in full force and effect with respect to the Prepetition Revolver Indebtedness and the Prepetition Notchholder Indebtedness, except to the extent that such terms or provisions are modified herein, are subject to the other provisions of this Final Order or are subject to, unenforceable as a result of, or otherwise modified or affected by the filing of the Chapter 11 Cases; and it is further

36. ORDERED that in no event shall any cost and expense of administration paid before the Termination Date or permitted under this Final Order to be paid after the Termination Date (other than the Carve-Out) be imposed upon the Prepetition Lenders or the FRN Noteholders pursuant to Sections 506(c) and/or 105(a) of the Bankruptcy Code or otherwise without the prior written consent of the Prepetition Agent, the FRN Trustee and the Ad Hoc Consortium, as applicable, and no such consent shall be implied from any action, inaction or acquiescence by such parties or otherwise; and it is further

37. ORDERED that the Prepetition Lenders and the FRN Notchholders shall each be entitled to all of the rights and benefits of Section 552(b) of the Bankruptcy Code and the "equities

of the case" exception under Section 552(b) of the Bankruptcy Code shall not apply to the Prepetition Lenders or the FRN Noteholders with respect to proceeds, product, offspring or profits of any of the Prepetition Lender Collateral or the Noteholder Collateral, as applicable; and it is further

38. ORDERED that, with respect to transfers of funds by the Debtors as reflected in the Approved Budget to the Debtors' non-debtor affiliates and foreign subsidiaries, the Debtors shall (a) not exceed the amounts reflected for such foreign subsidiaries as enumerated in the Approved Budget, subject to any variance permitted under paragraph 5, and all such amounts shall only be for documented services, sales, commissions, royalties, licensing agreements, labor, overhead and fabrication, sorting, assembly and testing materials and supplies in support of the Debtors' business, (b) not make any loans to their non-debtor or foreign affiliates and (c) not authorize or otherwise allow their foreign affiliates to incur indebtedness for borrowed funds; and it is further

39. ORDERED that the Debtors shall promptly (and in no event later than two (2) business days after discovery) provide notice to the Prepetition Agent, the Ad Hoc Consortium, the FRN Trustee and the Committee of any breach by the Debtors of any of their obligations under this Final Order; and it is further

40. ORDERED that to the extent that any Cash Collateral of Spansion LLC is used by any other Debtor, Spansion LLC shall have an administrative claim against such Debtor in an amount equal to the Cash Collateral used by such Debtor unless and until such amount is repaid to Spansion LLC; and it is further

41. ORDERED that the Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Final Order; and it is further

42. ORDERED that the terms and conditions of this Final Order shall be immediately effective and enforceable upon its entry; and it is further

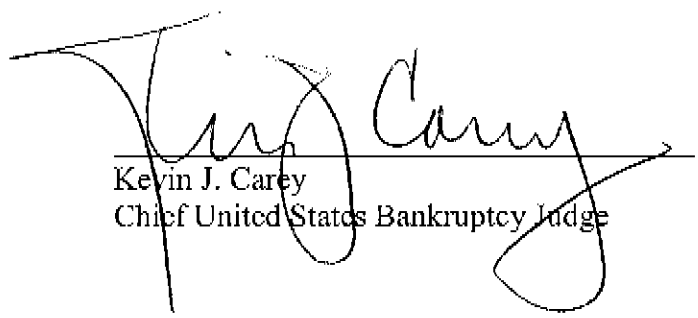
43. ORDERED that nothing contained herein shall prejudice the rights of the Debtors, the Committee or any other party in interest from requesting additional or other relief; and it is further

44. ORDERED that Debtors are directed promptly to serve a copy of this Final Order by first class mail, postage prepaid, on counsel for the Prepetition Lenders, counsel for the FRN Trustee, counsel for the Ad Hoc Consortium, counsel for the Committee, the office of the United States Trustee and all parties who, on or before the date of this Final Order, have filed a request for notice in the Chapter 11 Cases; and it is further

45. ORDERED that nothing contained in this Final Order shall be deemed to be a finding of fact, conclusion of law or admission by this Court or any party-in-interest, including without limitation the Debtors and their estates, as to the validity, amount, enforceability, perfection or priority of any claim or lien of the Prepetition Lenders, the FRN Noteholders, any agent or trustee acting for or on their behalf or any other person or entity; and it is further

46. ORDERED that this Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Final Order.

Dated: May 15, 2009  
Wilmington, Delaware



Kevin J. Carey  
Chief United States Bankruptcy Judge